

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE N. BETETA,

Plaintiff,

v.

DR. GRAY,

Defendant.

No. 2:22-cv-0037 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On March 22, 2022, the court screened plaintiff's amended complaint as the court is required to do under 42 U.S.C. § 1915A and found that plaintiff could proceed on a claim arising under the Eighth Amendment against defendant Dr. Gray. Dr. Gray has moved to dismiss any claim against him in his official capacity arguing that any such claim is barred by the Eleventh Amendment. Defendant Dr. Gray does not seek dismissal of plaintiff's claim against Dr. Gray in his individual capacity. Plaintiff has indicated he does not oppose Dr. Gray's motion.

Good cause appearing, IT IS HEREBY ORDERED that the Clerk of the Court assign a district court judge to this case.

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IT IS HEREBY RECOMMENDED that:

1. Defendant Dr. Gray's motion to dismiss (ECF No. 21) be granted; and
2. Any claim against defendant Dr. Gray in his official capacity be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 5, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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